IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1295 of 2007

T.Satyanarayana Murthy .. Petitioner

Vs.

1. The State of Tamil Nadu by its Secretary
   Home, Prohibition & Excise Department
   Secretariat, Fort St.George, Chennai 9.

2. The Commissioner of Police
   Office of the Commissioner of Police
   Egmore, Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.M.R.Radhakrishnan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner is the father-in-law of one Vijaya Bhaskar, who has been clamped an order of detention second respondent herein, as the said authority arrived at the subjective satisfaction that the said detenu is a Slum Grabber and he has to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 25.7.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.481 of 2007 on the file of R1, Mambalam Police Station for the offences punishable under Sections 120(b), 343, 365, 380, 386, 452, 468, 308 and 506(2) IPC given by one Vidhya. On 1.6.2007, at about 5.30 pm, the detenu, along with his associate, went to the house of Dr.Chandrika Iyer and kidnapped

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her by making her unconscious and kept her in his custody. One Vidhya, daughter of Dr.Chandrika Iyer's sister found her aunt missing, gave a complaint before the Sub Inspector of Police, R1, Mambalam Police Station. In the meanwhile, the detenu took the death certificates of Dr.Chandrika Iyer's father and mother and obtained legal heir certificate as if his aunt Pappayammal @ Miss Iyer is Dr.Chandrika Iyer. Thereafter, he applied for change of property in the name of his aunt. Hence, the survey officials went to measure the land, where they were informed by the neighbours about the missing of Dr.Chandrika Iyer. The survey officials informed R1 Mambalam Police Station about the issuance of legal heir certificate and the application for issue of patta in the name of Pappayammal. On 6.6.2007 at 6.30 pm, coming to know about the action of the police, left Dr.Chandrika Iyer at Jagadeeswaran Street and threatened her not to inform anything to Police. Thereafter, Dr.Chandrika Iyer, along with Vidhya, went to R1 Mambalam Police Station and gave a statement. On the same day, at about 10 pm, the detenu was arrested.

2.2. The detaining authority, having satisfied that the detenu is a Slum Grabber, passed the impugned order of detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

3. Challenging the said detention, the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the detention order made in D.O.No.344 of 2007, dated 25.7.2007 passed by the second respondent herein, to quash the same and to direct the respondent to produce the detenu, now detained in Central Prison, Puzhal, Chennai and to set him at liberty.

4. Heard the learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention of the learned counsel for the petitioner is that there is a considerable delay in considering the representation and the same renders the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 25.7.2007. A representation was made to the Government on 2.8.2007 and the same was received by it on 3.8.2007. Remarks were called for from the detaining authority on 6.8.2007, which was received by the detaining authority on 6.8.2007. Parawar remarks was called for from the sponsoring authority on 7.8.2007 and the same was received on 13.8.2007, after a delay of four days, excluding two public holidays. The report was sent to the Government on 14.8.2007 and the same was received by it on 14.8.2007. The file was considered by the Under Secretary and the Additional Secretary on 17.8.2007 and the Hon'ble Minister on 20.8.2007. The rejection order was prepared on 20.8.2007 and served on the detenu on 22.8.2007. The delay in considering the representation, as indicated above, was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention and there is no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court

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will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

10. The delay which stands unexplained is fatal to the detention order attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The impugned order of detention order is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kpl

To

1. The Secretary to Government
   Home, Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The Commissioner of Police
   Office of the Commissioner of Police
   Egmore, Chennai 600 008.

3. The Superintendent of Central Prison
   Central Prison, Puzhal, Chennai-66.

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

1 cc To Mr.M.R.Radhakrishnan, Advocate, SR.71374.

H.C.P.No.1295 of 2007.

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RVL 24.12.2007

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